

**TO: THE CHIEF EXECUTIVE OR MANAGING OFFICER AND  
CHAIRMAN OF THE AUDIT COMMITTEE OF ALL LOUISIANA  
STATE-CHARTERED BANKS AND THRIFTS**

**FROM: SID SEYMOUR, CHIEF EXAMINER**

**DATE: FEBRUARY 1, 2005**

**RE: OFI UPDATE**

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**Regulatory Updates** — I will continue to keep you informed through the issuance of periodic publications. These updates may be viewed or retrieved from OFI's website at [www.ofi.state.la.us](http://www.ofi.state.la.us). If you wish to change the email address that receives these updates, please complete question number 4 on the attached Services Survey. The following rules, policies, and procedures were recently finalized, updated, or repealed:

- **Repossession Agents** — *LAC 10:XV.1301-1321 effective December 20, 2004*
- **Limitations on Investments in Premises and Fixed Assets** — *LAC 10:I.1101 effective November 20, 2004*
- **Interstate banking** — *Policy No. DI-03-2004 dated September 10, 2004*
- **Enforcement actions** — *Policy No. DI-02-2004 dated September 17, 2004*
- **Audit requirements** — *OFI Bulletin BL 01-2005 dated February 1, 2005 (attached)*
- **BL-01-2002** — This bulletin was first issued on October 24, 2002, and is being **repealed** as a result of changes in the law.

**Continued emphasis on areas of operational risk** — As previously communicated in OFI Bulletin BL-06-2003, examiners are concentrating on potential areas of operational risk and the need for an effective internal audit function. We will be expanding our procedures to include a review of the institution's policies and procedures regarding the approval and payment of executive expenses. Examiners will meet with Audit Committees to discuss their duties and responsibilities and share some of the best practices seen at other institutions. Additionally, we recently adopted the attached OFI Bulletin discussing audit and auditor requirements and functions.

The Louisiana Bankers' Association (LBA) has created an internal auditor peer group to provide an opportunity for internal auditors to discuss relevant issues. If your internal auditor would like to join this group, please contact Ginger Laurent with the Louisiana Bankers' Association at (225) 214-4824, or by email at [laurent@lba.org](mailto:laurent@lba.org). The peer group's next meeting is on March 11, 2005.

**Investment in bank-owned life insurance (BOLI)**—On December 7, 2004, the federal banking agencies issued guidance concerning BOLI. This guidance contains valuable information regarding existing as well as prospective purchases of BOLI. Please read this guidance carefully and note that the calculation for a concentration is slightly different for the various banking agencies. At future examinations, examiners will be checking for compliance with this guidance. If you hold in excess of the concentration threshold, you can expect examiners to more closely scrutinize the risk management policies and controls associated with BOLI assets and, if deficient, require corrective action. The FDIC distributed the guidance attached to Financial Institution Letter (FIL-127-2004), but the guidance is the same for the FDIC, FRB, OTS, and OCC. You can find the FIL and guidance at the following address: <http://www.fdic.gov/news/news/financial/2004/fil12704.html>.

**Mineral rights**—A state, non-member bank or savings bank may hold mineral interests acquired in connection with debts previously contracted (DPC) without notification or application to the FDIC as long as the property is being passively held (not for active use<sup>1</sup>) for less than ten years from the date of acquisition. Once the ten year divestiture period has transpired, the property, with the mineral interests intact or severed from the property, must be moved to a single purpose subsidiary (in compliance with Section 362.4(b)(5) of the FDIC's Rules and Regulations and with the approval of this office to form the subsidiary) and a notification or application must be approved by the FDIC for the institution's subsidiary to continue to hold the mineral interests. Regardless of the notice/application requirements, a bank or savings bank must take steps to assess and manage the risks associated with the ownership of mineral rights both prior to acquisition and during the holding period. Please contact this office and the FDIC for more information regarding notice/application or risk management issues.

**Insurance LLC**—A significant number of state-chartered financial institutions have invested in Bankers Insurance Center, LLC, that has been determined to be a financial subsidiary based on the fact that it is controlled by one or more insured depository institutions and engages in activities that are financial in nature. Since national banks must meet certain requirements in order to invest in a financial subsidiary engaged in financial activities as agent, the FDIC has recommended that state chartered institutions adhere to these same requirements. However, we have requested a formal interpretation from the FDIC in this regard.

**Incomplete SARs**—In recent SARs filed by state-chartered institutions, we have noted that some are not responding to Item 39 of the SAR Form, which asks if the institution's bonding company has been notified. You are urged to respond to all items requested on the SAR Form. In fact, OTS Rules and Regulations 12 CFR 563.180(c) require savings associations to promptly notify their bonding company and file a proof of loss for any covered losses greater than twice the deductible amount under the procedures provided by its bond. In addition, you are reminded of FDIC Rules and Regulations Section 353.3(c) and OTS Rules and Regulations 12 CFR 563.180(d)(5) which encourages a bank or savings association to file a copy of the SAR with state and local law enforcement agencies where appropriate. NOTE: In correspondence dated February 17, 2003, you were notified that we were experiencing problems that limit our ability to report egregious violations to the Attorney General or to the local District Attorney if the information is obtained through the FinCEN System. As a result, this office will continue to contact you if it is necessary

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<sup>1</sup> Active use could include production, extraction, or exploration activities, or entering into a lease or making a change to a preexisting lease involving mineral interests.

for you to submit directly to this office copies of certain SARs filed through FinCEN. We may then submit a copy of the SAR to the appropriate state authority pursuant to LSA-R.S. 6:121.1(C).

**Residential Mortgage Lending Laws** — The Louisiana Residential Mortgage Lending Act became effective January 1, 2000. While banks and thrifts, their direct and indirect subsidiaries, and employees/exclusive agents are exempt from the licensing provisions, they are subject to Part III of the Act which covers certain limits on fees and charges. This part (LSA-R.S. 6:1095-1099) also requires a separate disclosure in instances where loans are brokered.

Direct and indirect subsidiaries of holding companies require licensure and are subject to the entire Act (LSA-R.S. 6:1081-1099). The employees and exclusive agent originators for these subsidiaries remain exempt from the licensure provisions of the Act but are subject to the entire Act.

Therefore, if your financial institution is involved in this type of lending, please review and become familiar with the appropriate sections of the law. Compliance with these sections will be reviewed at upcoming examinations. If you have any questions, you may contact Deputy Chief Examiner Darin Domingue at (225)922-2596 or by email at [ddomingue@ofi.state.la.us](mailto:ddomingue@ofi.state.la.us).

**Money Transmitters** — Beginning in 2005, the supervision and regulation of money transmitters was transferred from the nondepository division to the depository division. Also starting this year, these entities will be examined for compliance with BSA. If you have any questions regarding these licensees, please contact Deputy Chief Examiner Joe Gardner at (225) 925-4673 or by email at [jgardner@ofi.state.la.us](mailto:jgardner@ofi.state.la.us).

**BSA Procedures for Money Services Businesses (MSBs)** — An important part of proper due diligence for account relationships with MSBs should include verifying that the business has met state licensing requirements and is registered with FinCEN. You may verify that an MSB is registered with FinCEN by obtaining a copy of the filing directly from the MSB or checking the status online at [www.msb.gov](http://www.msb.gov). To verify that an MSB is properly licensed by this office, you may check the license online at [www.ofi.state.la.us](http://www.ofi.state.la.us) or contact Administrative Specialist Donna Montagnino at (225) 925-4483 or by email at [dmontagnino@ofi.state.la.us](mailto:dmontagnino@ofi.state.la.us). The OCC recently sent out guidance to national banks on dealing with money services business (MSB) customers in Advisory Letter 2004-7. The FDIC is close to completing BSA examination guidance that will be sent out very soon. It will likely include guidance on dealing with MSBs similar to this OCC advisory letter.

If a financial institution suspects that a customer is an unlicensed or unregistered MSB, it should file a SAR **and** notify Deputy Chief Examiner Joe Gardner. The institution should also carefully consider the risks of providing services to such an entity. In addition to considering risk to its reputation, the institution should consider the type of activity in the account (e.g., cash transactions or international wires), patterns of activity (e.g., whether it reflects an ongoing fraud or other criminal activity), and the volume of activity and transaction amounts.

As a reminder, you are required by Louisiana Law to verify that businesses involved in the sale of checks or money transmission (defined and described in LSA-R.S. 6:1032 and 1033) are properly licensed by this office pursuant to LSA-R.S. 6:1052(A).

**Appraisal of Commercial Real Estate Collateral and Supervisory Loan-to-Value Requirements** —

During a recent bank examination, we noted that an appraisal on collateral securing a commercial real estate loan contained a market value that included separate components of value for real property and a “going concern” allocation. In general, federal guidelines require that any value associated with “intangible assets” cannot be recognized as a portion of the “market value” in determining compliance with supervisory loan-to-value (LTV) requirements established by federal regulations<sup>2</sup>.

It is important that management reviews appraisals on commercial real estate collateral to ensure that it does not incorrectly include separate components of value for real property and a “going concern” allocation. If the “going concern” allocation is included, management may have to adjust the appraised value of the real estate collateral in determining compliance with supervisory LTV requirements. If you have any questions, you may contact Deputy Chief Examiner John Fields at (225) 922-0633 or by email at [jfields@ofi.state.la.us](mailto:jfields@ofi.state.la.us).

### ***Annual Reminders:***

#### **Bid Procedures for Failed Banks**

Periodically, the FDIC will take bids on a failing institution. Previously, the FDIC contacted all Louisiana banks and thrifts rated 2 or better to determine their interest in bidding on failing institutions. Depending on your response, your institution will only be included in the bidding process for certain size institutions or only on institutions in a certain area of the U.S. If you are interested in changing your level of interest in the bidding process or removing or adding your institution to the potential bidders’ list, call or email Martha Duncan with the FDIC’s Division of Resolutions in Dallas, TX. Her phone number is 972/761-2219; her email address is [M&A@fdic.gov](mailto:M&A@fdic.gov). She will assist you in signing a confidentiality statement and obtaining access to a secure website. She will also answer any questions regarding the bidding process.

#### **Directors’ Examination Update**

Your 2004 Directors’ Examination Report must be submitted to this office **no later than April 30, 2005**. If your institution has a year-end period other than December 31, your Directors’ Examination Report is due within 120 days from that alternative year-end date. Information needed to file your 2004 Directors’ Examination Report is included in OFI Bulletin 07-2003: Directors’ Examination Requirements. This bulletin and the cover sheet that must be submitted, as well as the Directors’ Examination Rule, are on OFI’s website at [www.ofi.state.la.us](http://www.ofi.state.la.us), under the “Banks, Savings Banks and Thrifts” section of the home page.

#### **Director’s Oath Forms**

A director’s oath form must be executed by each director elected by your shareholders at its annual meeting in compliance with the provisions of LSA-R.S. 6:282 relating to the duties and responsibilities of directors. These forms are available on OFI’s web site at [www.ofi.state.la.us](http://www.ofi.state.la.us).

#### **2005 Holiday Schedule**

Once a 2005 holiday schedule has been approved, please forward a copy of the board resolution relating to the schedule to this office. If your Board **does not** approve a holiday schedule, you must notify OFI **each time** the institution closes for a holiday. LSA-R.S. 6:128 contains the specific requirements regarding this notification.

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<sup>2</sup> Part 365 of the FDIC’s Rules and Regulations for non-member banks and savings banks, Regulation H for member banks, and 12 CFR 560.100 and 560.101 for savings and loan associations

**Record Retention Schedule**

Enclosed is OFI's revised 2005 Record Retention Schedule. Questions should be directed to Deputy Chief Examiner Joe Gardner at (225) 925-4673 or by email at [jgardner@ofi.state.la.us](mailto:jgardner@ofi.state.la.us).

**Responses to the following items are requested (even if there are no changes from last year). Please ensure that the attached documents are distributed to the appropriate person within the institution and a timely response is submitted to this office. No specific "as of" date is required. Just provide the most current information possible. DEADLINE: February 28, 2005.**

**Annual Questionnaire**

Review the information and make any additions, deletions, or revisions on the enclosed form. Questions should be directed to Administrative Specialist Pam Skelton at (225) 925-4661 or by email at [pskelton@ofi.state.la.us](mailto:pskelton@ofi.state.la.us) or Administrative Specialist Donna Montagnino at (225) 925-4483 or by email at [dmontagnino@ofi.state.la.us](mailto:dmontagnino@ofi.state.la.us).

**Services Survey**

A "revised" blank copy of the services survey and a copy of your responses from last year, are enclosed. Please review the information provided last year, **then complete the revised form, even if there are no changes**, since the form has changed slightly. Questions should be directed to Deputy Chief Examiner Kerry Morris at (225) 925-4201 or by email at [kmorris@ofi.state.la.us](mailto:kmorris@ofi.state.la.us).

Your cooperation is appreciated. Please do not hesitate to contact this office if you have any questions.

Enclosures

